

EXHIBIT H

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JON S. TIGAR, JUDGE

MARCIANO PLATA, ET AL.,)
)
PLAINTIFFS,) NO. C-01-1351 JST
)
VS.) THURSDAY, MAY 21, 2020
)
GAVIN NEWSOME, ET AL.,) OAKLAND, CALIFORNIA
)
) FURTHER CASE MANAGEMENT
DEFENDANTS.) CONFERENCE
)

REPORTER'S TRANSCRIPT OF TELEPHONIC PROCEEDINGS

APPEARANCES :

FOR PLAINTIFFS: PRISON LAW OFFICE
1917 FIFTH STREET
BERKELEY, CALIFORNIA 94710
BY: DONALD H. SPECTER, ESQUIRE
STEVEN FAMA, ESQUIRE
ALISON HARDY, ESQUIRE

FOR DEFENDANTS: HANSON, BRIDGETT LLP
425 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
BY: PAUL B. MELLO, ESQUIRE
SAMANTHA WOLFF, ESQUIRE

(APPEARANCES CONTINUED)

REPORTED BY: DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

DIANE E. SKILLMAN, OFFICIAL COURT REPORTER, USDC

FOR DEFENDANTS: DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
455 GOLDEN GATE AVENUE, STE. 11000
SAN FRANCISCO, CALIFORNIA 94102

BY: DAMON G. MCCLAIN, DEPUTY A.G.

FOR INTERVENOR MESSING ADAM & JASMINE, LLP
CCPOA: 235 MONTGOMERY STREET, STE. 828
(LISTENING) SAN FRANCISCO, CALIFORNIA 94104
BY: GREGG M. ADAM, ESQUIRE

CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION
755 RIVERPOINT DRIVE STE. 200
SACRAMENTO, CALIFORNIA 95605

**FOR RECEIVER
CLARK KELSO:** FUTTERMAN DUPREE DODD CROLEY MAIER
601 MONTGOMERY STREET, STE. 333
SAN FRANCISCO, CALIFORNIA 94111
BY: MARTIN H. DODD, ESQUIRE

ALSO PRESENT: CLARK KELSO, RECEIVER

1 THURSDAY, MAY 21, 2020

10:00 A.M.

2 P R O C E E D I N G S

3 000

4 **THE COURT:** GOOD MORNING, EVERYONE. THIS IS JUDGE
5 TIGAR.

6 AS YOU CAN SEE, MY PICTURE IS NOT MOVING AT ALL. THEY
7 HAVE SOME TECHNOLOGICAL LIMITATIONS TODAY, SO I'LL BE
8 PARTICIPATING -- OR I'LL BE PRESIDING, RATHER, OVER THE CASE
9 MANAGEMENT CONFERENCE BY USING AUDIO.

10 I CAN SEE ALL OF YOU. I'M USING THE SAME ZOOM PROGRAM
11 THAT YOU ARE, SO I AM ABLE TO SEE YOU. AND I JUST APOLOGIZE
12 THAT HOPEFULLY ONLY TODAY I'M NOT ABLE TO BE ADVISABLE TO YOU.

13 MS. LEE, WOULD YOU GO AHEAD AND CALL THE CASE, PLEASE?

14 **THE CLERK:** YES, SIR.

15 YOUR HONOR, NOW CALLING CIVIL MATTER 01-1351 MARCIANO
16 PLATA, ET AL. V. GAVIN NEWSOM, ET AL.

17 IF COUNSEL COULD PLEASE IDENTIFY THEMSELVES FOR THE RECORD
18 STARTING WITH PLAINTIFFS.

19 **MR. SPECTER:** THANK YOU. THIS IS DONALD SPECTER FROM
20 THE PRISON LAW OFFICE FOR PLAINTIFF.

21 (PAUSE IN THE PROCEEDINGS.)

22 **THE COURT:** MS. HARDY, YOU DON'T SHOW AS MUTED ON
23 YOUR SCREEN, BUT YOU'RE NOT AUDIBLE.

24 **MS. HARDY:** I WAS WATCHING STEVE FAMA SPEAK AND HE
25 WAS MUTED. THIS IS ALISON HARDY, AND I AM APPEARING FOR THE

1 PLAINTIFFS TODAY.

2 **MR. FAMA:** I APOLOGIZE FOR NOT BEING AUDIBLE FOR A
3 FEW SECONDS THERE.

4 THIS IS STEVEN FAMA ALSO FOR THE PLAINTIFFS.

5 **MR. MELLO:** GOOD MORNING, YOUR HONOR, PAUL MELLO,
6 HANSON, BRIDGETT ON BEHALF OF DEFENDANTS.

7 **MS. WOLFF:** GOOD MORNING, YOUR HONOR. SAMANTHA WOLFF
8 FROM HANSON, BRIDGETT ON BEHALF OF DEFENDANTS.

9 **MS. MCCLAIN:** GOOD MORNING, YOUR HONOR, DAMON MCCLAIN
10 FOR THE DEFENDANTS.

11 **THE COURT:** OKAY. VERY GOOD.

12 **MR. DODD:** GOOD MORNING, YOUR HONOR. MARTIN DODD FOR
13 THE RECEIVER.

14 **MR. KELSO:** GOOD MORNING, YOUR HONOR. CLARK KELSO,
15 THE RECEIVER.

16 **THE COURT:** ALL RIGHT. AND THE RECORD WILL REFLECT
17 THAT MR. SANDERS AND MR. ADAM ARE ALSO HERE LISTENING IN TO
18 THE PROCEEDINGS ON BEHALF OF THE CCPOA.

19 WHY DON'T WE GET GOING. I AM GOING TO PROCEED AS I HAVE
20 THE LAST COUPLE OF WEEKS, AND THAT IS, I'M GOING TO LEAD OFF
21 THE DISCUSSION ON THE TOPICS THAT WERE OF INTEREST TO ME FROM
22 THE PARTIES' CASE MANAGEMENT STATEMENT. AND THEN AFTER I'VE
23 SAID WHAT I HAVE TO SAY OR ASK THE QUESTIONS THAT I NEED TO
24 ASK, I'LL INVITE THE PARTIES TO CONTRIBUTE FURTHER ON THAT
25 PARTICULAR TOPIC.

1 LET ME START WITH SOMETHING THAT I THINK IS A REAL
2 POSITIVE, AND THAT IS TESTING. I APPRECIATE THE EFFORTS THAT
3 THE DEFENDANTS MADE TO ANSWER THE COURT'S QUESTIONS REGARDING
4 TESTING. I UNDERSTAND THAT CERTAIN INFORMATION SIMPLY WAS NOT
5 AVAILABLE TO THEM. I THINK THAT FOR NOW I HAVE ENOUGH
6 INFORMATION ABOUT THAT TOPIC, AND I'M GLAD THAT THE STATE'S
7 EFFORTS TO PROVIDE THE RECEIVER WITH THE TESTS HE NEEDS HAVE
8 PAID OFF.

9 I SEE THAT THE PLAINTIFFS NOTE THAT THERE IS NOW A DELTA
10 BETWEEN THE TESTS THAT THE RECEIVER HAS ACCESS TO AND THE
11 TESTS THAT THE RECEIVER WILL NEED GIVEN THE INTAKE LEVELS THAT
12 ARE FORECAST AND SO FORTH. I'M GOING TO ALLOW THE RECEIVER TO
13 THINK ABOUT WHAT HE WANTS TO DO WITH THOSE TESTS. I DON'T
14 ANTICIPATE MAKING ANY ORDERS TODAY, AND THAT'S REALLY ALL I
15 HAVE TO SAY ON THE SUBJECT OF TESTING.

16 MR. SPECTER, DO YOU WANT TO ADD ANYTHING?

17 **MR. SPECTER:** WELL, I WAS THINKING, ACTUALLY, NOW
18 THAT THEY HAVE MORE TESTS AVAILABLE FOR A SMALLER POPULATION
19 THAT THEY -- THAN THEY ANTICIPATED, WHETHER MR. KELSO WAS
20 CONSIDERING USING SOME OF THOSE TESTS TO TEST THE STAFF.

21 AND THE REASON THAT IS, BECAUSE AS YOU PROBABLY HAVE SEEN
22 THROUGH OUR CASE MANAGEMENT STATEMENT AND THE COVID TRACKER,
23 THE VIRUS IS SPREADING AMONG INSTITUTIONS WHILE THE PRISONER
24 POPULATION HAS BEEN LOCKED DOWN. SO IT SEEMS THAT THE VECTOR
25 OF -- FUSION OF -- OR TRANSMISSION OF THE VIRUS IS RELATED TO

1 THE EMPLOYEES WHO COME IN AND OUT OF THE PRISON.

2 SO I WAS WONDERING WHAT MR. KELSO'S VIEWS ON THAT WERE.

3 **THE COURT:** WELL, THAT'S A GOOD QUESTION. BEFORE I
4 TURN TO MR. KELSO OR ASK HIM TO RESPOND TO THAT, IS THERE
5 ANYTHING, MR. MELLO OR MS. WOLFF, THAT THE DEFENDANTS WANT TO
6 SAY ON THIS SUBJECT?

7 **MR. MELLO:** NO. I THINK YOUR HONOR'S STATEMENTS THAT
8 THE RECEIVER SHOULD BE ALLOWED TO THINK ABOUT THAT AND CONSULT
9 WITH US ON THAT MAKES SENSE TO US, YOUR HONOR.

10 **THE COURT:** MR. KELSO, WOULD IT BE APPROPRIATE FOR ME
11 JUST TO ASK YOU TO RESPOND NEXT WEEK, GIVE THE PARTIES AN
12 OPPORTUNITY TO MAKE WHATEVER PROPOSALS THEY WANT TO YOU FOR
13 YOU TO CONSULT WITH YOUR STAFF AND -- I'M GOING TO COME BACK
14 TO THE SUBJECT OF PUBLIC HEALTH EXPERTISE IN JUST A MOMENT.

15 WOULD IT BE APPROPRIATE FOR ME TO ASK YOU TO RESPOND TO
16 THE PARTIES AND THEN WE CAN TAKE THAT UP NEXT WEEK?

17 **MR. KELSO:** YES, YOUR HONOR.

18 THE -- WE AGREE THAT AT THIS POINT THE MOST SIGNIFICANT
19 RISK OF EXPOSURE COMES FROM STAFF. A COUPLE OF THOUSAND TESTS
20 CERTAINLY DOESN'T GIVE US THE ABILITY TO TEST STAFF EVERYWHERE
21 WE WOULD NEED TO. BUT IT MAY GIVE US THE OPPORTUNITY TO TEST
22 STAFF AT SPECIFIED HIGH-RISK INSTITUTIONS, FOR EXAMPLE, OR AT
23 THE BEGINNING OF WHAT MAY BE AN OUTBREAK.

24 AND MY STAFF IS ALREADY THINKING ABOUT ALONG THOSE LINES
25 AS WELL AS WHETHER WE CAN TAKE -- AND IT MAY BE RELATED TO

THIS -- WHETHER WE CAN TAKE SOME ADDITIONAL STEPS TO PROTECT PATIENTS AT INSTITUTIONS WHERE OUTBREAKS MAY BE BEGINNING WHEN IT COMES TO -- OR DORMS, MORE PRECISELY, WHEN IT COMES TO EMPLOYEE COHORTING. THAT'S AN AWFUL TERM FOR WHAT I'M TRYING TO DESCRIBE HERE. I THINK --

(SIMULTANEOUS COLLOQUY)

THE COURT: I APPRECIATE YOUR --

MR. KELSO: -- IN THE CASES.

9 **THE COURT:** WHAT YOU ARE REFERRING TO IS THE IDEA
10 THAT THERE SHOULD BE -- WHEN YOU SAY "EMPLOYEE COHORTING,"
11 THAT AN INDIVIDUAL STAFF MEMBER SHOULD INTERACT WITH AS FEW
12 INMATES AS POSSIBLE OR -- MAYBE THAT'S NOT THE BEST WAY OF
13 SAYING THAT, BUT THAT INMATES -- ACTUALLY, PROBABLY THE BETTER
14 WAY IS, EACH INMATE SHOULD INTERACT WITH THE SAME STAFF
15 MEMBERS AT A GIVEN ROLE OR POSITION TO THE GREATEST EXTENT
16 POSSIBLE.

THAT'S WHAT YOU MEAN?

18 **MR. KELSO:** YES, YOUR HONOR. YOU HAVE STATED IT
19 BETTER THAN I DID.

THE COURT: OKAY.

MR. KELSO: AND WE ARE STARTING TO THINK ABOUT THAT.

22 **THE COURT:** THESE TESTS -- IT MAY BE THAT
23 MR. SPECTER'S SUGGESTION IS A GOOD ONE AND IT'S THE RIGHT ONE,
24 AND IT SOUNDS LIKE MR. KELSO IS ALREADY THINKING ABOUT THAT.
25 I WILL COME BACK TO THIS TOPIC IN JUST A SECOND.

1 ONE LIMITATION THAT I THINK WE HAVE BEEN EXPERIENCING IN
2 THESE CASE MANAGEMENT CONFERENCES IS -- AND I DON'T KNOW
3 EVERYBODY'S C.V. HERE, BUT I'M GOING TO HAZARD A GUESS THAT
4 NONE OF US HAS A MEDICAL DEGREE AND NONE OF US HAS A DEGREE IN
5 PUBLIC HEALTH. SO WE HAVE PEOPLE TAKING POSITIONS, INCLUDING
6 THE COURT, IN THESE CASE MANAGEMENT CONFERENCES WHERE WE SAY
7 WE SHOULD DO "X" AND SOMEONE SAYS WE SHOULD DO "X" FOR THE
8 PURPOSE OF PROMOTING PUBLIC HEALTH WITHIN THE PRISONS. AND
9 NOBODY HERE HAS ANY EXPERTISE IN THAT AREA.

10 SO, THAT'S SOMETHING I WANT US TO THINK ABOUT. I THINK IT
11 IS RELATED TO THIS QUESTION OF HOW TO USE THE TESTS. I DON'T
12 WANT THE PARTIES TO BE TALKING PASSED EACH OTHER. I THINK
13 EVERYBODY NEEDS TO BE CLEAR WITH EVERYBODY ELSE ABOUT THE
14 BASIS FOR A PARTICULAR SUGGESTION BECAUSE THESE TESTS -- NOW
15 WE HAVE MORE OF THEM THAN WE USED TO -- THEY REMAIN SCARCE.
16 THERE IS A VERY HIGH OPPORTUNITY COST FOR EACH TEST. BY THAT
17 I MEAN, IF YOU USE THE TEST FOR A GIVEN PURPOSE, IT IS NO
18 LONGER AVAILABLE FOR ANY OTHER PURPOSE.

19 SO IT'S NOT A DECISION THAT YOU WOULD WANT TO MAKE
20 CASUALLY BECAUSE ONCE IT IS NOT AVAILABLE FOR ANOTHER PURPOSE,
21 IF THAT OTHER PURPOSE WOULD HAVE DONE A BETTER JOB OF
22 IDENTIFYING WHERE THE RISK OF TRANSMISSION OF COVID IS, YOU'VE
23 GIVEN UP AN IMPORTANT OPPORTUNITY.

24 SO, ANYWAY, I THINK FOR THAT REASON, AND THE OTHER REASONS
25 WE'VE DISCUSSED, IT MAKES SENSE FOR THE PARTIES TO MAKE THEIR

1 SUGGESTIONS TO MR. KELSO, FOR MR. KELSO TO GET BACK TO THE
2 PARTIES, AND FOR BOTH OF THOSE STEPS TO HAVE OCCURRED BEFORE
3 NEXT WEEK'S CASE MANAGEMENT CONFERENCE.

4 IF THE PARTIES ARE ABLE TO COME TO SOME KIND OF COMMON
5 UNDERSTANDING, THAT'S GREAT. IF THEY ARE NOT, THEN WE CAN
6 FIGURE OUT WHAT TO DO ABOUT IT NEXT WEEK.

7 LET'S TALK ABOUT HIGH-RISK INMATES. AND I THINK WE'VE
8 ESTABLISHED IN A PRIOR CASE MANAGEMENT CONFERENCE THAT WE'RE
9 TALKING ORDER OF MAGNITUDE ABOUT ROUGHLY 50,000 INMATES. AND
10 THAT JUST MEANS THAT THESE ARE INMATES WHO HAVE ONE OR MORE
11 FACTORS THAT ARE ASSOCIATED WITH ADDITIONAL RISK FOR GETTING
12 COVID OR IF YOU GET COVID, FOR HAVING A BAD RESULT.

13 THAT'S OBVIOUSLY A HUGE NUMBER. AS THE PLAINTIFFS
14 ACKNOWLEDGE IN THEIR CASE MANAGEMENT STATEMENT, THERE ARE
15 DEGREES OF RISK. SO SOME PEOPLE ARE AT HIGHER RISK THAN
16 OTHERS. I'M AWARE OF THE GIANT LIST OF INMATES WHO HAVE ONE
17 OR MORE FACTORS. I'M NOT AWARE THAT ANYBODY HAS TAKEN OR MADE
18 THE EFFORT, IF IT CAN BE DONE, TO CREATE GRADATIONS OF RISK
19 WITHIN THAT LIST. IF THAT HAS HAPPENED, I AM NOT AWARE OF IT.

20 I JUST WANT TO SAY THAT BEFORE THE COURT STARTS
21 ENTERTAINING PROPOSALS OR MAKING ORDERS ON THIS ISSUE, I THINK
22 THE CONVERSATION REALLY SUFFERS FROM THE LIMITATIONS I WAS
23 IDENTIFYING A MOMENT AGO. SO THE FIRST THING THAT NEEDS TO
24 HAPPEN IS, I NEED CLEAR GUIDELINES AND PROCEDURES FROM THE
25 STATE.

1 THE SECOND THING IS, I NEED TO KNOW WHAT IS ADVISABLE FROM
2 A PUBLIC HEALTH STANDPOINT.

3 AND THE THIRD THING IS, I NEED TO KNOW WHAT'S FEASIBLE.
4 BECAUSE SOMETHING MIGHT BE THE BEST THING FROM A PUBLIC
5 STANDPOINT, BUT IT MIGHT NOT BE POSSIBLE FOR US RIGHT NOW TO
6 CARRY IT OUT. BUT WE NEED TO KNOW WHAT THE BEST THING IS,
7 EVEN IF WE CAN'T CARRY IT OUT BECAUSE WE NEED TO KNOW HOW
8 CLOSE WE CAN GET.

9 I WANT TO UNPACK THAT FOR A SECOND. THE FIRST THING I
10 SAID WAS, A WRITTEN PLAN AND A SET OF GUIDELINES AND
11 PROCEDURES.

12 SO WHAT EXACTLY ARE THE PROCEDURES AND THE GUIDELINES THAT
13 THE STATE FOLLOWS WITH REGARD TO HIGH-RISK INMATES? HOW DO
14 YOU DETERMINE WHERE THEY ARE HOUSED? WHAT DO YOU DO IF THERE
15 IS AN OUTBREAK?

16 I DON'T KNOW IF "OUTBREAK" HAS A SPECIAL MEANING TO THIS
17 GROUP. MAYBE THAT SUGGESTS A LARGER NUMBER OF INFECTIONS.

18 BUT WHAT DO YOU DO IF THERE IS AN INFECTION WITHIN THEIR
19 HOUSING UNIT? WHAT DO YOU DO IF THERE ARE SEVERAL INFECTIONS
20 WITHIN THEIR HOUSING UNIT? UNDER WHAT CIRCUMSTANCES DO YOU
21 CONSIDER TRANSFER? IF YOU CONSIDER TRANSFER, WHERE ARE THE
22 PLACES TO WHICH THAT INMATE MIGHT BE TRANSFERRED?

23 I'M NOT EVEN SAYING THESE ARE THE RIGHT QUESTIONS. I'M
24 JUST SAYING THAT I DON'T KNOW HOW WE CAN PROCEED TO HAVE A
25 CONVERSATION UNLESS WE HAVE A WRITTEN SET OF GUIDELINES AND

1 PROCEDURES TO ADDRESS THESE ISSUES.

2 NOW, I KNOW THAT THERE HAS ALREADY BEEN SOME BACK AND
3 FORTH BETWEEN THE PARTIES ABOUT THIS. AND ON MAY 18TH, THE
4 STATE FILED A DOCUMENT THAT CONTAINS SOME RESPONSES TO
5 QUESTIONS THAT THE PLAINTIFF -- PLAINTIFFS HAVE ASKED. THAT
6 DOCUMENT IDENTIFIES THAT MEDICAL STAFF ALREADY HAVE POLICIES
7 AND PROCEDURES IN PLACE FOR ASSESSING WHETHER MEDICALLY
8 HIGH-RISK INMATES ARE HOUSED IN AN ENVIRONMENT THAT IS
9 CONDUCIVE TO THE RECEIPT OF ONGOING ADEQUATE TREATMENT.

10 IT SAYS THAT IF MEDICAL STAFF DETERMINE THAT ANY HIGH-RISK
11 PATIENT WHO HAS BEEN MOVED INTO NONSTANDARD HOUSING, E.G. GYMS
12 OR TENTS, CANNOT BE TREATED ADEQUATELY IN THEIR CURRENT
13 PLACEMENT, THEN ALTERNATIVE PLACEMENT FOR THAT PATIENT MAY BE
14 APPROPRIATE.

15 THE RESPONSE RULES OUT LARGE MOVEMENT OF INMATES BETWEEN
16 INSTITUTIONS FOR PUBLIC HEALTH REASONS, BUT IT DOESN'T SAY
17 ANYTHING ABOUT SMALLER MOVEMENTS AND IT DOESN'T ADDRESS THE
18 QUESTION OF MOVEMENTS WITHIN THE INSTITUTION.

19 SO I SEE THAT DOCUMENT AS BEING AN EXAMPLE OF THE KIND OF
20 THING I'M TALKING ABOUT. I DON'T THINK IT COVERS THE
21 WATERFRONT. ALSO THAT DOCUMENT WAS WRITTEN BY LAWYERS, WHICH
22 IS FINE, THIS IS LITIGATION; IT WAS WRITTEN BY LAWYERS TO SEND
23 TO SOME OTHER LAWYERS. THE DOCUMENT ITSELF IS NOT THE
24 UNDERLYING POLICIES AND PROCEDURES. IT'S A DESCRIPTION OF --
25 IT'S A SECOND ORDER DESCRIPTION OF SOMETHING ELSE.

1 SO WHY AM I GOING ON ABOUT THIS? BECAUSE WE CAN'T KNOW
2 WHETHER -- WE HAVE TO HAVE POLICIES AND PROCEDURES TO
3 ESTABLISH THE TERMS OF THE DEBATE IN PART SO WE CAN KNOW IF
4 THE PROCEDURES ARE BEING FOLLOWED, BUT ALSO SO WE CAN KNOW IF
5 THE PROCEDURES THEMSELVES ARE THE CORRECT PROCEDURES.

6 SO THAT'S JUST THE FIRST THING. THAT IS, HAVING CLEAR
7 GUIDELINES AND PROCEDURES, NOT JUST ON THIS ISSUE OF HIGH-RISK
8 INMATES, WHICH IS ONE OF THE MOST VISIBLE ISSUES IN THE CASE
9 MANAGEMENT STATEMENT, BUT ON ANY ISSUES LIKE THIS AS THEY GO
10 ALONG BECAUSE WE ARE GOING TO BE MANAGING THIS CASE TOGETHER
11 FOR SOME TIME. THIS IS NOT GOING TO GO AWAY. SO THIS HAS TO
12 BE A MODE OF THINKING ABOUT HOW TO SOLVE OUR PROBLEMS.

13 SECONDLY, I SAID, I NEED TO KNOW WHAT IS ADVISABLE FROM A
14 PUBLIC HEALTH STANDPOINT. THIS IS CRUCIAL. THIS IS CRUCIAL.
15 I HAVE THE PARTIES EVERY WEEK TELLING ME -- I HAVE THE
16 PLAINTIFFS TELLING ME, THE STATE SHOULD BE DOING "X." I HAVE
17 THE DEFENDANTS SAYING, AND THEY ACTUALLY USE THIS WORD, AND I
18 PROMISE YOU WE WILL COME BACK TO THIS, WHAT WE ARE DOING IS
19 "SUFFICIENT." SUFFICIENT. SAYS WHO? US WITH OUR LAW
20 DEGREES?

21 SO AT THIS POINT I AM NOT -- I AM NOT CURRENTLY ENGAGED IN
22 THE PROCESS OF HIRING A COURT EXPERT; I MAY AT SOME POINT DO
23 THAT. THIS WOULD NOT BE SOMEBODY WHO WORKS FOR MR. KELSO.
24 THIS WOULD BE SOMEBODY WHO ONLY WORKED FOR ME.

25 IF I DO THAT, I WILL BE ASKING YOU TO WAIVE CERTAIN OF THE

1 BENEFITS TO YOU OF RULE 706. I WOULD ONLY DO IT, FOR EXAMPLE,
2 IF I COULD TALK EX PARTE TO THE PERSON WITHOUT POURING OVER
3 THOSE CONVERSATIONS SO THAT I CAN GET CANDID ADVICE THAT WOULD
4 BE FREE FROM WHAT HAPPENS WHEN THINGS ARE INTRODUCED IN
5 LITIGATION.

6 BUT I'M NOT THERE YET. I'M NOT THERE BECAUSE WHAT I WANT
7 TO SAY IS, I THINK THAT YOU, THE PARTIES, SHOULD CONSIDER
8 HIRING PUBLIC HEALTH EXPERTS SO THAT YOU COULD BE PERSUASIVE
9 TO ME.

10 I DO THAT WITH SOME RELUCTANCE. I DO IT WITH RELUCTANCE
11 BECAUSE IT'S A LITIGATION STEP, AND I FEEL WE HAVE BEEN MAKING
12 MORE PROGRESS IN THESE CONFERENCES WHEN WE MOVE AWAY FROM A
13 LITIGATION MODEL. BUT I FIND IT DIFFICULT TO EVALUATE THE
14 PARTIES' PROPOSALS AND THEIR RESPONSES TO EACH OTHER'S
15 PROPOSALS WITHOUT KNOWING WHAT THOSE PROPOSALS ARE GROUNDED
16 IN; WHETHER I WOULD BE MAKING A MISTAKE BY ADOPTING OR NOT
17 ADOPTING A PARTICULAR PROPOSAL.

18 SO, IF YOU GO DOWN THAT PATH AND, FRANKLY, I HOPE YOU
19 WILL, AND THAT IS TO HIRE REPUTABLE PRISON PUBLIC HEALTH
20 EXPERTS, THAT THESE WOULD BE PERSONS WHO COULD PROVIDE
21 GUIDANCE NOT JUST TO YOU BUT ALSO TO ME, AND ALSO TO EACH
22 OTHER. AND I WOULD HOPE THOSE EXPERTS WOULD TALK DIRECTLY TO
23 EACH OTHER.

24 SO, FOR EXAMPLE, I'M GOING TO START JUMPING BACK AND FORTH
25 BECAUSE I SAID THERE ARE THREE THINGS, AND WE'RE GOING ON AT

1 LENGTH ABOUT THE SECOND ONE. LET'S KEEP ON WITH THIS SECOND
2 PART, WHICH IS DETERMINING WHAT'S ADVISABLE FROM A -- OR BEST
3 PRACTICE FROM A PUBLIC HEALTH STANDPOINT.

4 SO LET'S JUST TALK ABOUT A COUPLE OF EXAMPLES. PUTTING
5 TRANSFER OF HIGH-RISK INMATES TO ONE SIDE, ARE THERE OTHER
6 STEPS THE FACILITY SHOULD BE TAKING TO PROTECT HIGH-RISK
7 INMATES? ARE THERE? I DON'T KNOW.

8 I HAVE A TREMENDOUS AMOUNT OF CONFIDENCE IN MR. KELSO AND
9 HIS TEAM; I CONTINUE TO HAVE THAT. THESE COMMENTS ARE NOT IN
10 ANY WAY IN TENSION WITH WHAT I JUST SAID. BUT AS I SAID LAST
11 WEEK, WE ALL HAVE TO BE COMMITTED TO DOING EVERYTHING WE CAN.

12 SO, I THINK IT WILL HAVE A MUCH MORE -- IT WILL PROVIDE
13 MUCH MORE CREDIBILITY, WEIGHT WHEN THE PARTIES SAY, HAVE YOU
14 THOUGHT ABOUT THIS? COULD YOU ORDER MR. KELSO TO DO THAT?
15 WHY DON'T YOU ASK THE STATE ABOUT THIS IF I KNOW THAT THOSE
16 SUGGESTIONS ARE COMING FROM A PLACE OF PUBLIC HEALTH
17 EXPERTISE?

18 ALSO, IF THE PARTIES BOTH HIRE EXPERTS, THOSE EXPERTS
19 COULD BE TALKING TO EACH OTHER AND HOPEFULLY YOU COULD BE
20 MAKING PROGRESS OFFLINE. BECAUSE ANY TIME BOTH OF THE EXPERTS
21 AGREE ON SOMETHING, SUBJECT TO FEASIBILITY, WHICH WE WILL GET
22 TO IN JUST A SECOND, THEN THAT GIVES MR. KELSO ADDITIONAL
23 COMFORT IN TWO FORMS. FIRST, ADDITIONAL COMFORT THAT THIS
24 ADDITIONAL PUBLIC HEALTH EXPERTISE SUGGESTS THAT THERE'S A
25 GOOD WAY FORWARD AND, SECONDLY, HE KNOWS IT'S NOT GOING TO BE

1 **MR. MELLO:** THAT WORKS, YOUR HONOR.

2 **THE COURT:** OKAY. VERY GOOD. WE WILL SET OUR NEXT
3 CASE MANAGEMENT CONFERENCE ON THURSDAY, MAY 28TH AT 10:00 A.M.
4 WAS THE STATEMENT DUE AT 4:00 O'CLOCK YESTERDAY?

5 **MR. SPECTER:** YES, YOUR HONOR.

6 **THE COURT:** STATEMENT WILL BE DUE AT 4:00 O'CLOCK
7 WEDNESDAY, MAY 27.

8 I THANK THE PARTIES. THAT ENDS THIS CONFERENCE.

9 (PROCEEDINGS CONCLUDED AT 11:10 A.M.)

10

11 **CERTIFICATE OF REPORTER**

12 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
13 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
14 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
15 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

16

17 

18 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

19 WEDNESDAY, MAY 27, 2020

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